

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of Section 224 of the Act)	WC Docket No. 07-245
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51

To: THE COMMISSION

COMMENTS OF DOMINION VIRGINIA POWER
REGARDING THE
POLE ATTACHMENTS WORKSHOP

Pursuant to the Public Notice that announced a pole attachments workshop to be held on September 28, 2010, and an opportunity to comment by the reply comment date, (DA 10-1738), Virginia Electric and Power Company, doing business as Dominion Virginia Power, files these comments regarding the pole attachments workshop.

The purpose of the workshop was to "learn from the experiences and insights of state regulators whose states directly regulate pole attachments." There were panelists from six states, including Connecticut, New Hampshire, New York, Oregon, Utah and Vermont. None of the panelists was a commissioner of any of the states' regulatory commissions; all were staff members, either engineers or attorneys, who had considerable experience with their state's pole attachment rulemakings and dispute resolutions.

The program began with the FCC staff explaining that several of the proposals contained in Order and Further Notice of Proposed Rulemaking (FCC 10-84) in this proceeding were drawn from the approaches taken by the states. For example, make-ready timelines were modeled after rules adopted in Connecticut and New York; a

proposal for a published schedule of charges was based on New York regulations; the proposal for payment in stages for make-ready work came from Utah; and the proposal for use of contractors was modeled after New York's approach.

Each of the panelists then took turns describing their particular state's pole attachment regulations and the processes that led up to them. (Virtually all of the regulations were the products of extensive workshops that involved both pole owners and attaching entities – an approach that the POWER Coalition, of which Dominion Virginia Power is a member, has advocated in earlier comments.) Each state had considered essentially the same issues, but they had come out very differently. Clearly, *an approach that worked for one state, did not work for others.*

It also became clear that in formulating their pole attachment regulations, states were trying to solve problems or meet particular objectives that were specific to their state. For example, Connecticut was attempting to deal with the fact that AT&T was a joint owner of all but about 40,000 of the 850,000 poles in the state. AT&T had no incentive to make it easy for competitors to gain prompt access to poles, hence the adoption of timelines for access requests and make-ready. Similarly, in New Hampshire, the phone company, Fairpoint, jointly owned most of the poles.

Oregon was primarily interested in safety. They adopted the National Electrical Safety Code ("NESC") and they resolve disputes by reference to the NESC. New York, on the other hand, was more concerned with broadband access. Oregon made the point that regulation without enforcement is useless. Utah principally wanted to avoid duplicate facilities because telecommunications companies were finding it more cost effective to erect their own pole lines.

In other words, the states are not mini-laboratories where various approaches to pole attachment regulation are being tried. Rather, *the states are implementing the regulations that work best for them.*

The states did have some valuable experiences to share, however. In the course of its presentation, New Hampshire mentioned that although they have adopted pole attachment timelines, it appears that pole owners are having difficulty in meeting them. New Hampshire also mentioned that a contractor who was working on a pole last year was electrocuted.

New Hampshire apparently has a law which entitles municipalities to pole space at no charge. When there is only one attachment location left on a pole, municipalities want that location reserved for them, even if a broadband provider is seeking access to the pole. (In fact, one broadband provider even performed make-ready to create space on poles, but then a municipality swooped in and took the space!) This episode illustrates why it would be so difficult for a federal regulatory scheme to work in every state.

Despite adopting pole attachment rules, many -- if not all -- of these states said that they allow or require the parties to attempt to work out difficult issues themselves. Oregon has an industry joint use association that includes a dispute resolution committee. The consensus seemed to be that emergencies or extraordinary circumstances justified deviation from the timelines or other rules and needed to be worked out between the parties. The state utility commission is the last resort when negotiations fail.

After hearing how each state has dealt with pole attachment regulations, it is apparent that trying to draw from regulations adopted in the various states and apply them to the 30 states where the Commission regulates pole attachments is precisely the wrong

approach. There plainly is no one-size-fits-all approach that would work equally well throughout the country. In adopting their rules, each state was coping with a different circumstance or trying to achieve a different objective. In other words, the Oregon approach was not right for New York and vice versa. Yet the Commission seems to think that the Vermont approach might work well in Arizona.

The Commission's existing pole attachment regime already has minimal pole attachment regulations and a stated preference for individual negotiations between the parties. The experience of the states that regulate pole attachments shows that it makes no sense to lay on more and stricter regulatory obligations, especially if the Commission does not have the resources to enforce them. Several of the states said that disputes are down, not because of their rules, but because the parties now know each other and the expectations of the regulators. It is enough, then, for the Commission to set forth in this proceeding its expectations, not new regulations. The experience of the states indicates that cooperation will increase and complaints will decrease.

Respectfully submitted,

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